IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.01.2017

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THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.No.1833 of 2017
and WMP Nos.1821 and 1822 of 2017

Exide Industries Limited
Industries Division,
No.7/1 & 7/2, M.T.H.Road,
Ambattur Industrial Estate,
Chennai-600 058.

represented by its
Authorised Signatory
B.Baskar, S/o.S.Balakrishnan
residing at No.19, 1st Main Road,
Jawahar Nagar,
Chennai-600 082. .. Petitioner

vs.

1. The Deputy Commissioner (CT)-I,
Large Taxpayers Unit,
34 (Old No.123), 'Durga Towers',
Marshall Road, Egmore,
Chennai-600 008.

2. The Joint Commissioner of Commercial Taxes, LTU-I, Assessment Circle,
Marshall Road, Egmore,
Chennai-600 008.

3. The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005. .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari to call for the records pertaining to the issue of the assessment order in proceedings vide No.CST/32926/2015-16, dated 29.12.2016 by the Deputy Commissioner (CT)-I, Large Taxpayers Unit, 34 (Old No.123), 'Durga Towers', Marshall Road, Egmore, Chennai-600 008, the first respondent herein, and quash the same.

For Petitioner : Mr.D.Ashok Kumar
For Respondents: Mr.S.Kanmani Annamalai
Additional Government Pleader

ORDER

1. Issue notice. Mr.S.Kanmani Annamalai, learned Additional Government Pleader, accepts notice on behalf of the respondents.

1.1. With the consent of the learned counsels for the parties, the writ petition is taken up for hearing and final disposal.

2. This writ petition is directed against the order dated 29.12.2016.

2.1. By virtue of the aforesaid order, the petitioner has been called upon to pay tax equivalent to a sum of Rs.260,03,07,096/- (Rupees two hundred and sixty crores three lakhs seven thousand and ninety six only).

3. The sole ground, on which, the challenge is laid to the order dated 29.12.2016, is that the said order was passed before the time stipulated for filing the audit report in Form WW had expired.

3.1. According to the petitioner, time for filing the audit report in Form WW qua the Assessment Year (AY) in question, i.e., AY 2015-2016 was initially, available till 31.12.2016, which via G.O.Ms.No.132, Commercial Taxes and Registration (B1) Department, dated 29.12.2016, was extended till 10.01.2017, in respect of those assessees, whose principal place of business was situate in those parts of the State, which were hit by cyclone ; Chennai being one of them.

3.2. It is the petitioner's case that since, its principal place of business is in Chennai, it was entitled to the benefit of the aforementioned Government Order.

4. Mr.Kanmani Annamalai, concedes that under sub-rule (1) to Rule 16-A of the Tamil Nadu Value Added Tax Rules, 2007 (in short 2007 Rules), initially, time to file the audit report in Form WW, was available to the petitioner till 31.12.2016; which, as correctly pointed out by the learned counsel for the petitioner, was extended till 10.01.2017.

4.1. Mr.Annamalai, cannot, but submit that the assessment order was passed prematurely without waiting for submission of audit report in Form WW.

5. I have heard the learned counsel for the parties and perused the record.

6. For the sake of convenience, Rule 16-A of the 2007 Rules is extracted hereafter :

> "16.-A. Procedure for Filing Audit Report - (1) Every registered dealer liable to get his accounts audited as per sub-section (1) of section 63-A shall furnish the audit report in Form – WW within nine months from the end of the year from the end of the financial year in duplicate." ....

7. A plain reading of Rule 16-A(1) would show that a dealer is required to furnish his audit report in Form WW within nine months from the end of the financial year. Therefore, clearly, the petitioner had initially leeway till 31.12.2016, to file the audit report in Form WW, which got extended via the aforementioned Government Order till 10.01.2017, with the insertion of a proviso to that effect, in Rule 16-A(1) of the 2007 Rules.

8. In these circumstances, this Court has no option, but to set aside the impugned order with a direction to respondent No.1 to redo the assessment.

8.1. For this purpose, the petitioner's authorised representative will appear before respondent No.1 on 15.02.2017 at 11.00 a.m.

8.2. The petitioner will submit its audit report in Form WW along with all requisite material and information in original on or before the date of hearing, indicated above.

8.3. In case, for any reason, the said date is not convenient to respondent No.1, respondent No.1 will fix a fresh date, which would be proximate to the date given by the Court.

8.4. Needless to say the assessment will be completed with due expedition, though, not later than ten (10) weeks from the date of receipt of a copy of the order.

9. The writ petition is disposed of in terms of the aforesaid direction. Consequently, pending applications shall also stand closed. There shall, however, be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commissioner (CT)-I,
   Large Taxpayers Unit,
   34 (Old No.123), 'Durga Towers',
   Marshall Road, Egmore,
   Chennai-600 008.

2. The Joint Commissioner of Commercial
   Taxes, LTU-I, Assessment Circle,
   Marshall Road, Egmore,
   Chennai-600 008.

3. The Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai-600 005.

+1cc to Mr.D. Ashokkumar, Advocate, S.R.No.4970
+1cc to the Government Pleader, S.R.No.4879

EV(CO)
EU 03.2.17

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